

# CARL GIGANTE

## Rising to Eminence in Eminent Domain Law

by John Flynn Rooney

Carl A. Gigante strikes a proper balance between a busy law practice representing clients in eminent domain matters and his family, colleagues say.

While Gigante puts in at least 50 hours in a week as a partner at **Figliulo & Silverman P.C.** in Chicago, he also makes time for his wife, four children, and his faith.

Gigante ticks off the top three most important facets of his life: “faith, family, and friends.”

Gigante carves time out at work to attend midday Mass at St. Peter’s Church in the Loop.

His biggest challenge is “balancing the priorities, what you give to the firm and your family,” Gigante says, adding “I think if you will make time for the Lord, He will give you the time you need.”

Gigante is “an individual that always has a proper balance for someone in our field,” says Marc S. Porter, a longtime friend and colleague.

“He puts his wife and his family first,” Porter says. “He’s the kind of guy who always carries his family in his heart. He sees his work as a way to serve his family and to serve others.”

James A. Figliulo says his friend and longtime partner is “a very sound, principled guy. He respects the balance in life.”

### Out With Engineering, In With Law

Gigante is the second son of Joseph, who worked a motion picture projectionist, and Annette Gigante, a homemaker. Both are deceased. Gigante’s older brother, Joe, is a family physician in the western suburbs.

The Gigante brothers grew up in the far West Side’s Galewood neighborhood in a Chicago-style bungalow. They were raised in the home with other extended family members, including a grandmother, aunt, and cousin.

“I still have dreams of being in that house,” Gigante says of the home where his parents lived for 32 years.

Gigante attended Fenwick High School where he served a president of the student council and of his junior class. He also played on the school’s baseball team.

When he enrolled at Northwestern University, Gigante joined the Naval Reserves, initially as a way to pay for college. But due to complications with the funding from the Navy, he backed out of that program after about five months.

While at Northwestern, Gigante studied engineering and was a member of an engineering fraternity.

“I was always fascinated by guys constructing



things, building things,” Gigante says, referring to roads and bridges.

After borrowing money for his second semester sophomore year at Northwestern, Gigante left that university. “I was broke.”

So, he moved back home and started attending Loyola University Chicago. While at Loyola, Gigante took a difficult math class.

“I was starting to think I wasn’t cut out to be an engineer after all,” Gigante says.

Gigante switched his major to political science and took a constitutional law class, which fueled his interest in a legal career. He graduated from Loyola *magna cum laude* in 1980.

He postponed law school for a year while working full time for the City of Chicago Department of Streets and Sanitation, the same job he had during the summer months in high school and college.

“That’s how I paid for my education,” Gigante says.

Gigante later enrolled at Loyola University Chicago School of Law. During law school, he had an internship with the late U.S. District Court Judge Nicholas J. Bua.

“It helped me understand how judges view cases and the presentation of cases to them, what they look for (and) how a judge like that makes decisions,” Gigante recalls.

Gigante received his juris doctor from Loyola in 1983 and was admitted to the Illinois bar on Nov. 9, 1983. That year, the Chicago law firm of Foran, Wiss & Schultz for the first time interviewed Loyola law students for jobs. At that time, Figliulo was a young partner at the Foran, Wiss firm and interviewed Gigante.

“Immediately, I thought this is a good man

who is smart and will be a good lawyer,” Figliulo says of Gigante. “There is a certain authenticity and sincerity to Carl that is just immediately sensed, not just by me, but by other people who have met him.”

Gigante had never heard of Foran, Wiss, but it “turned out to be a perfect fit for me.”

Thomas A. Foran, a venerable trial attorney who had served as U.S. attorney for the Northern District of Illinois in the 1960s, headed the firm. Gigante was exposed to eminent domain law, which was Foran’s specialty.

“One thing Tom always taught me...many times it is your opponent who gives you the best part of your case,” Gigante says. “If you look hard enough you find quite a few ‘gems’ hidden in the factual or expert testimony and the documents produced by your opponent.”

Gigante says eminent domain law “is tied to the Constitutional right to receive just compensation. It’s in the Fifth Amendment, planted in the heart of the Bill of Rights.

“For me, the most interesting aspect of eminent domain law centers around the power of government to acquire private property,” he says. “So, these ‘takings’ cases basically have two parts to them, the first being whether the government has the power to take your property and the second being what is just compensation for the property interest being taken.”

Gigante notes that most people had never heard of eminent domain until the U.S. Supreme Court’s 2005 5-4 decision in the case of *Kelo v. New London, Conn.* In that decision, the high court issued a controversial interpretation of the Constitution’s allowance for the municipal “taking” of private property for “public use.” The

divided high court held that local governments may condemn private homes and businesses to make way for shopping malls, hotel complexes, and other redevelopment projects that generate tax revenue.

"Many people, including lawyers, are still shocked to learn that the government can take private property and convey it to a private developer for redevelopment," Gigante says.

## An Insight into Jurors

During early 1996, Figliulo and Gigante represented the Walsh-Higgins Partnership in a U.S. District Court case relating to the development of air rights above the LaSalle Street Station in downtown Chicago. The trial resulted in a \$24.5 million verdict for Walsh-Higgins, which was upheld on appeal by the 7th U.S. Circuit Court of Appeals in 1997.

"It was a really high-risk case," Gigante says.

In the Walsh-Higgins case, Gigante suggested not calling an expert appraisal witness on damages for the value of the air rights, Figliulo says. Instead, the plaintiff attorneys cross-examined the defense experts and relied on the testimony of their client, Jack Higgins, a prominent Chicago developer.

Figliulo says he was opposed to that strategy.

"Carl had to talk me into it," Figliulo adds. But "it worked great."

The Walsh-Higgins trial also included a humorous moment when Figliulo was cross-examining a witness. Gigante laughed while approaching Figliulo at the podium and whispered to Figliulo that his pants cuff was stuck in his sock. Jurors also laughed. An exasperated Figliulo finally understood when Gigante pointed to his partner's pants cuff. Then Figliulo started laughing.

"The fact that we respect each other and like one another so much comes across," Figliulo says. "I think judges and jurors like that."

Figliulo says Gigante has a strong and reliable insight into people such as jurors.

"I have listened to his judgment about potential jurors and jury selection, which was counter to mine," Figliulo says. "It turned out he was right, over and over again. He's basically an empathetic person, and I think he has a talent to understand people."

Figliulo recalls trying an eminent domain case along with Gigante 15 or 20 years ago in DuPage County. Their client was seeking a particular amount of money for his property that the City of Oak Brook Terrace planned to take through eminent domain.

Figliulo questioned potential jurors, including three refined, kindly, middle-aged women. He also questioned a man who admitted he was convicted of shoplifting. The three women kept their distance from the man during the questioning, Figliulo recalls

Gigante suggested that the man be seated on the jury, believing that he would support the citizens against the government. But Figliulo believed the three women would strongly dislike the man. Figliulo told Gigante he better be right and decided to keep the male juror.

"As it turned out, this guy was an extremely strong advocate for us, and he wanted to give us every penny we asked for," Figliulo says. Indeed, the jury directed the city to pay their client the full amount.

Porter says that Gigante "complements (Figliulo) because of Carl's people skills. He's able to give insights that a busy attorney like Jim might not always be able to see at first hand."

During late 1996 and with Foran's blessing, Figliulo, Peter A. Silverman, Gigante, and Porter left Foran's firm and launched Figliulo & Silverman, which currently comprises 18 lawyers.

For Gigante, the best part of his job is "coming to work with my friends. I trust them, they trust me. We have a tremendous amount of mutual respect for one another."

Figliulo says of Gigante, "There is no man I know who is more decent and trustworthy than Carl. I would trust him, and do, with anything."

Gigante and Figliulo teamed in another trial in spring 2009. They represented Anna Mae "Babe" Ahern, 101 and a lifelong resident of southwest suburban Evergreen Park.

In 2002, the Village of Evergreen Park sued Ahern in an eminent domain action to obtain the 95-acre Evergreen Country Club, which her family had owned for about nine decades. The village sought the property at 91st Street and Western Avenue to ensure that it would remain open space used for golf and recreation.

Ahern had never listed the land for sale, her attorneys said. She had, however, received unsolicited offers from developers who wanted to buy the property and rezone it for commercial use.

In 1999, Home Depot reached a \$25 million contract with Ahern, contingent on getting the property rezoned. But the village board denied the project. The big-box retailer later opened a store in nearby Oak Lawn.

In May 2009, a Cook County Circuit Court jury decided there was a reasonable probability that the land could be rezoned, so jurors said the village should have to pay Ahern \$25 million.

"Working with (Figliulo) is always fun," Gigante says. "I suppose the fun part was having this 101-year-old client, going up against the government, and not backing down. Ahern refused to give in."

Cook County Circuit Court Judge Alexander P. White presided over the trial involving Ahern. Gigante has appeared before White numerous times during the past 20 years.

"Carl Gigante is one of the most motivated and highly competent attorneys who appears

before me" in condemnation cases, White says. "He is a consummate professional."

Vincent D. Pinelli, a principal of Burke, Burns & Pinelli Ltd. in Chicago, represented the Village of Evergreen Park in the Ahern case and has opposed Gigante in more than 10 cases.

"Without question, you can always trust (what Gigante) tells you in a case," Pinelli says.

Pinelli also calls Gigante a master craftsman.

"He really understands (eminent domain law), in every detail, in every way," Pinelli adds.

Gigante also handles matters on his own. He currently represents the City of Joliet in its attempt to acquire a privately owned, federally subsidized housing project. At issue is whether the housing project is insulated from the state's power of eminent domain because of its participation in a federal program, Gigante says.

After hearing oral arguments in January 2009, the 7th U.S. Circuit Court of Appeals ruled in Joliet's favor. Petitions for writs of certiorari are now pending before the U.S. Supreme Court.

The lawyers who practice in the eminent domain arena are familiar with one another and a fairly collegial group, Gigante says.

"I've been pretty fortunate in that in my practice, there is a mutual respect among the members of the bench and bar," Gigante says. "Civility is a given."

Gigante also has litigated cases in which the government has sought to acquire vacant land, farmland, single-family residences, hotels, restaurants, downtown office buildings, along with college campuses and churches.

## A Look into the Future

Observing that the commercial real estate market remains flat, Gigante says "we have clients right now who have shopping centers that have uncomfortably high vacancies. I don't see things turning upward for some time. It's going to stay down for awhile."

He believes the stimulus package should lead to a rash of public service projects.

"It's going to require an infusion of government spending to spur the eminent domain practice," Gigante says. "Public works projects provide the biggest impetus for growth in condemnation litigation."

Gigante, 52, and his wife Stella, a pre-kindergarten teacher, have been married for 25 years. They are the parents of four children. Their twin daughters, Michelle and Susan, are college students. Their sons, Mark and Michael, attend high school.

Gigante enjoys following the Chicago Cubs and Chicago Blackawks teams.

When time permits, he performs volunteer legal work several times each year.

"I'd like to spend more time when I can retire and afford it, doing legal work for the needy or in support of causes that I believe are worthy." ■